

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
FM Table of Allotments,)	
FM Broadcast Stations.)	
(Opelika, Alabama))	MB Docket No. 05-79
)	RM-10983
Reclassification of License of)	
Station WSTR(FM), Smyrna, Georgia)	

NOTICE OF PROPOSED RULEMAKING

Adopted: March 2, 2005

Released: March 4, 2005

Comment Date: April 25, 2005

Reply Comment Date: May 10, 2005

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a petition for rule making filed by Opelika Broadcasting Company ("Petitioner"), proposing the allotment of Channel 232A at Opelika, Alabama, as the community's second local FM transmission service. To accommodate the allotment, Petitioner also proposed the (a) reclassification of Station WDJC-FM in Birmingham, Alabama, from 229C to 229C0; and (b) the reclassification of Station WSTR(FM) at Smyrna, Georgia, from Channel 231C to Channel 231C0.^{1,2}

2. Petitioner advises that Channel 232A is the only Class A channel available for allotment at Opelika.³ In further support of its proposal, Petitioner states that Opelika is a community with a 200 U.S. Census population of 23,498 persons. Opelika has its own post office and zip code (36801). Petitioner further states that many businesses and churches are located in Opelika.

¹ Petitioner also requested the reclassification of Station WDJC-FM at Birmingham, Alabama, from Channel 229C to Channel 229C0. However, an engineering analysis has determined that the reclassification of Station WDJC-FM is not necessary to accommodate the Opelika allotment.

² Station WSTR(FM) operates on Channel 231C with an effective radiated power of 100 kilowatts at 311 meters height above average terrain (HAAT), which is below the minimum Class C antenna height of 451 meters HAAT. Therefore Station WSTR(FM) is subject to reclassification as a Class C0 facility. See *1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, 15 FCC Rcd 21,649 (2000). Pursuant to the requirements set forth in Note 4 of Section 73.3573 of the rules, we issued an *Order to Show Cause* to Jefferson-Pilot Communications Company of Georgia, licensee of Station WSTR(FM), affording it 45 days to express in writing an intention to seek authority to upgrade its technical facilities to preserve Class C status, or otherwise challenge the proposed action. See *In Re Reclassification of License of Station WSTR(FM) Smyrna, Georgia*, 19 FCC Rcd 12799 (MB 2004). No response was received, and therefore, in accordance with the Commission's reclassification procedures noted above, the license for Station WSTR(FM) will be reclassified in the context of this proceeding to specify operation on Channel 231C0 instead of Channel 231C at Smyrna, Georgia.

³ See 47 C.F.R. §§ 73.3573, n. 4 and 1.420(g), n.2. See also *Second Report and Order*, 15 FCC Rcd at 21,662, ¶ 26.

3. Petitioner's proposal warrants consideration because the allotment could provide Opelika, Alabama, with its second local aural transmission service. An engineering analysis has determined that Channel 232A can be allotted to Opelika in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.6 kilometers (4.7 miles) north to avoid a short-spacing to the licensed site of Station WIZB(FM), Channel 232C3, Abbeville, Alabama. The engineering analysis also shows that the reclassification of Station WSTR(FM), Smyrna, Georgia, to specify operation on Channel 231C0, will eliminate any short spacing to requested Channel 232A at Opelika, Alabama, at Station WSTR(FM) presently licensed site.^{4,5}

4. Accordingly, we seek comment on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>City</u>	<u>Present</u>	<u>Channel No.</u> <u>Proposed</u>
Opelika, Alabama	244A	232A, 244A
Smyrna, Georgia	231C	231C0

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the *Appendix* before a channel will be allotted.

6. Pursuant to 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments or counterproposals on or before April 25, 2005, and reply comments on or before May 10, 2005, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Any counterproposal filed in this proceeding need only protect Station WSTR(FM), Smyrna, Alabama, as a Class C0 allotment. Additionally, a copy of such comments should be served on the following:

Scott C. Cinnamon, Esq.
1090 Vermont Ave., NW., Suite 800
Washington, D.C. 20005
(Counsel for Petitioner)

7. In addition, a copy of this *Notice of Proposed Rulemaking* shall be sent to the following::

Jefferson-Pilot Communications Company of Georgia
Penthouse 1 Capital City Plaza
3350 Peachtree Road, N.E.
Atlanta, Georgia 30326

⁴ Coordinates for Channel 232AA at Opelika are 32-42-59 North Latitude and 85-23-22 West Longitude.

⁵ As indicated above, the minimum distance separation requirements are met based on the reclassification of Station WSTR(FM) to specify operation on Channel 231C0 in lieu of Channel 231C, at Smyrna, Georgia, Florida at its license coordinates 33-45-35 North Latitude and 84-20-07 West Longitude.

James R. Bayes, Esq.
Wiley, Rein & Fielding, LLP
1776 K Street, N.W.
Washington, D.C. 20006

8. Parties must file an original and four paper copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, Maryland 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. **All filings must be addressed to Marlene H. Dortch, Secretary, Federal Communications Commission. Any filing that is not addressed to the Office of the Secretary will be treated as filed on the day it is received in the Office of the Secretary. See 47 C.F.R. § 1.7. Accordingly, failure to follow the specified requirements may result in the treatment of a filing as untimely.**

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.⁶ This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

10. For further information concerning this proceeding, contact Sharon P. McDonald, Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically

⁶ See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

waives this service requirement. Any comment, which has not been served on the petitioner, constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who filed the comment to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in 47 U.S.C. Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b), and 47 C.F.R. Sections 0.61, 0.204(b) and 0.283, IT IS PROPOSED TO AMEND the FM Table of Allotments, 47 C.F.R. Section 73.202(b), as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments (*see* 47 C.F.R. Section 1.420(d).)

(b) Petitions for rule making which conflict with the proposals in this *Notice* will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; service. Pursuant to applicable procedures set out in 47 C.F.R. Sections 1.415 and 1.420, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments (*see* 47 C.F.R. Section 1.420(a), (b) and (c).) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of 47 C.F.R. Section 1.420, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.